



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: General Elevator Company, Inc.--
Reconsideration

File: B-250289.2

Date: February 16, 1993

Bernadine T. Harrity, Esq., for the protester.
William E. Thomas, Jr., Esq., Department of Veterans
Affairs, for the agency,
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protester whose bid is nonresponsive because it included an unsigned Certificate of Procurement Integrity is not an interested party to challenge award to another firm where the protester would not be eligible for the award if the protest were upheld.
2. Supplemental protest issue which is raised more than 10 days after protester knew, or should have known, of basis for protest is untimely.

DECISION

General Elevator Company, Inc. requests reconsideration of our October 9, 1992, dismissal of its protest against the Department of Veterans Affairs's (VA) award of a contract to Stratos Elevator, Inc. for preventive maintenance of elevators and dumbwaiters under invitation for bids (IFB) No. 613-3-93. General Elevator protested that Stratos Elevator did not meet the IFB's requirements that the contractor have 5 years of experience and be able to respond to requests for emergency service within 2 hours. Based on an agency report showing that General Elevator's bid was rejected as nonresponsive because it included an unsigned Certificate of Procurement Integrity, we found that General Elevator was not an interested party eligible to challenge the award under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1992), and dismissed the protest. We affirm our dismissal.

In its request for reconsideration, General Elevator contends that if all four of the other bids are rejected, the appropriate remedy will be for the VA to cancel the present invitation and resolicit. Since General Elevator will then have an opportunity to compete again, the firm contends that it has sufficient economic interest to be considered an interested party. In this regard, General Elevator points out that it specifically requested in its original protest letter that the VA be directed to (1) reject Stratos Elevator's bid and award to General Elevator or (2) cancel the IFB and rebid the requirement after clarifying the experience requirement.

The record shows that five bids, including General Elevator's nonresponsive bid, were received in response to this IFB. However, General Elevator's initial protest focused only on the eligibility of the awardee. It was not until General Elevator submitted its comments on the VA report (filed in our Office on October 15, 1992, after we had already dismissed General Elevator's protest) that General Elevator charged that all other responsive bids were submitted by nonresponsible bidders. In its comments, General Elevator argued, based upon the addresses of the other bidders as set forth in their bids, that none of the other bidders could meet the IFB's 2-hour emergency service requirement.

We correctly dismissed General Elevator's original protest against Stratos Elevator's eligibility for award. General Elevator had included an unsigned Certificate of Procurement Integrity, and, therefore, its bid was nonresponsive. See Cobra Corp., B-246109, Oct. 16, 1991, 91-2 CPD ¶ 340. Since General Elevator was not eligible for award, and there were three eligible bidders other than Stratos Elevator that had submitted bids, there would be no reason to recommend that the VA resolicit even if General Elevator's protest against award to Stratos Elevator were sustained. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. See Advanced Health Sys.--Recon., B-246793.2, Feb. 21, 1992, 92-1 CPD ¶ 214.

While General Elevator's original protest requested the alternate remedy of resolicitation, the protester's submission did not state any basis of protest explaining why resolicitation was warranted. Thus, we think General Elevator's argument, in its request for reconsideration, which for the first time furnishes the reasons why resolicitation is required, raises a new basis for protest. Where a protester initially files a timely protest and subsequently supplements it with new basis for protest, the later-raised allegation must independently satisfy the timeliness requirements of our Bid Protest Regulations,

4 C.F.R. § 21.2(a)(2), which require a protester to file its protest not later than 10 working days after the basis of protest was known, or should have been known, to the protester. See Wheco Corp., B-248978 et al., Oct. 13, 1992, 92-2 CPD ¶ 243. As this issue was first raised by General Elevator in its comments on the VA report, almost 2 months after the public bid opening, the issue is untimely and will not be considered further.

Finally, we see no reason to recommend that VA cancel the IFB and resolicit after clarifying the experience requirement as General Elevator suggested in its initial protest letter. General Elevator pointed out no deficiency in the IFB's experience requirement. Nonetheless, in response to General Elevator's request for reconsideration, we have reviewed the IFB's experience requirement and find no impropriety in those provisions. Rather, the IFB quite clearly tells bidders the type and years of experience necessary, and what they must provide to VA to support their experience claims and to be eligible for award.

The prior dismissal is affirmed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel